

Indiana's Approach to Combined Sewer Overflow Compliance Workplan for CSO Long Term Control Plan Review and Implementation August 2005

Introduction

EPA has developed two strategies for ensuring that CSO communities across the country make significant progress in implementing Long Term Control Plans (LTCPs) consistent with the 1994 Federal CSO Policy (the Policy). EPA's Office of Enforcement and Compliance Assistance (OECA) and Office of Water (OW) have both developed aggressive goals to accomplish this task.

In the "Performance Based Strategy for the Combined Sewer Overflows OECA National Priority" document, Goal #1 sets out the following criterion:

"By the end of FY=07, 65% of all permitted CSOs have an approved Long-Term Control Plan (LTCP) with an enforceable schedule that will ultimately result in compliance with the technology-based and water quality-based requirements of the Clean Water Act, or a formal enforcement action has been initiated to achieve that result."

Additionally, Region 5 has developed the "Region 5 Framework for CSO Problem Solving" dated September 3, 2004 in which the following targets are set:

"The OW target is: by 2008, address 75% of the universe through permitting and enforcement. The significance of the CSO problem in the Great Lakes is reflected by the fact that there are also CSO commitments specific to the Great Lakes in EPA's Strategic Plan. The Strategic Plan goal is: by FY08, 100% of CSO permits in the Great Lakes Basin are consistent with the national CSO Policy."

Indiana's Role

In order to assist EPA in meeting its goals in Indiana, the Indiana Department of Environmental Management (IDEM) has prepared the following workplan, incorporating EPA's targets and priorities as relevant to conditions in Indiana. The workplan targets primarily major municipal NPDES permittees where the CSO discharges are in the Great Lakes Basin and/or contributing to a 303d waterbody listed as impaired for *E. coli*. EPA's current activities in the state where Consent Decrees are being developed have already targeted NPDES permittees in the Great Lakes Basin, and those affecting drinking water sources and beaches. In the 2005 legislative session, Senate Enrolled Act 620, signed by Governor Daniels on April 21, 2005, gives IDEM the authority under IC 13-14-2-6 to incorporate LTCPs into a state court order (state consent decree). This state consent decree mechanism, referred to as a state judicial agreement, is expected to function judicially as a federal consent decree.

IDEM Resources

The Wet Weather Section in the Permits Branch has the responsibility of reviewing and approving Long Term Control Plans, and modifying the NPDES permits associated with them. CSO technical staff is comprised of two Senior Environmental Managers (one of whom is a wastewater engineer), 4 Environmental Managers, and 1 Environmental Scientist. The CSO Program has been assigned two program attorneys to assist in evaluating any legal issues that may arise during the LTCP review and approval process. Staff in the Office of Enforcement will draft the Agreed Orders to include the approved LTCP implementation schedule, and state consent decrees will be drafted by attorneys from IDEM and Office of the Indiana Attorney General.

EPA's Role

Region 5 is currently involved in Indiana's CSO communities through the initiation of the federal consent decree enforcement process in the following cities:

- Anderson
- Indianapolis
- Ft. Wayne
- South Bend
- Mishawaka
- Elkhart

In addition, Gary, Hammond, Jeffersonville and Evansville are expected to be under that process as well. Indiana has signed on as Plaintiff partners to the federal action in these cases, and continues to work cooperatively with EPA in resolving the CSO issues in those communities.

Should IDEM be unsuccessful in efforts to negotiate an approvable LTCP with a community, IDEM expects that assistance from EPA would be necessary in achieving that goal. IDEM intends on referring the environmentally significant major NPDES permittees described below to EPA for possible federal enforcement no later than nine months after IDEM has initiated the formal LTCP review process. During the review period, IDEM will keep EPA apprised of any negotiations which will are not leading to a mutually agreeable LTCP that plans for compliance with water quality standards.

IDEM will provide EPA copies of all final LTCP implementing documents that IDEM negotiates. In addition, IDEM will provide EPA the opportunity to see drafts of all state orders/consent decrees in negotiation, and to review and comment on permits/state orders/consent decrees with the fifteen communities noted in the schedule. Permits will continue to be submitted to Region 5 according to current procedures. IDEM will provide monthly updates on the status of plan implementation on the full universe of CSO communities.

CSO Enforcement Mechanisms

IDEM intends on using NPDES permits to implement approved Long Term Control Plans providing for the attainment of water quality standards with implementation schedules of five years or less. For approved Long Term Control Plans providing for the attainment of water quality standards with implementation schedules that exceed this time frame, IDEM intends on using the above referenced state consent decree judicial mechanism, authorized under IC 13-14-2-6, for major permittees discharging to any of the following environmentally significant areas: *E. coli* impaired watersheds, the Great Lakes Basin, within a mile upstream of a known drinking water intake, or those with significant compliance issues. Also, the state consent decree will be used for any approved Long Term Control Plan in which a Use Attainability Analysis is performed to successfully change the use designation of the receiving stream to the wet weather limited use subcategory established by the procedures set forth in Senate Enrolled 620 (2005). For all others, IDEM will use an Agreed Order through the administrative enforcement mechanism, authorized under IC 13-30-3-3.

State consent decrees will be developed by IDEM technical, enforcement and legal staff using the federal consent decree developed for other CSO communities as a template. Pursuant to IC 4-6-3-2, the Indiana Attorney General is required to represent the state in any civil action. The state consent decree will be filed by the Attorney General environmental representative in the jurisdictional state court in the county where the permittee is located. State consent decrees will incorporate milestones that mirror the implementation schedule set forth in the approved Long Term Control Plan with associated stipulated penalties for failure to meet a milestone. Compliance with the state consent decree will be monitored by the IDEM enforcement case manager in conjunction with the Wet Weather Section staff. State Agreed Orders will be developed in a similar fashion, using the administrative process as set forth in IC 13-30-3. State Agreed Orders will incorporate milestones that mirror the implementation schedule set forth in

the approved Long Term Control Plan with associated stipulated penalties for failure to meet a milestone.

The schedule of LTCP reviews incorporates the enforceable mechanism contemplated for permittees listed through 2006 based on the scheme outlined above. IDEM, however, wants to retain necessary flexibility should changes to LTCPs warrant the use of a different mechanism. The LTCPs for the permittees scheduled in years 2007 through 2009 have not been reviewed enough to determine which mechanism will be most appropriate at the time those plans are approved. In addition, Indiana's 303(d) list will change, and IDEM intends on using state consent decrees for any permittees discharging to newly listed *E. coli* impaired streams.

In circumstances where IDEM negotiations with a permittee are not leading to a mutually agreeable LTCP that provides for compliance with water quality standards and EPA is not interested in pursuing federal enforcement, IDEM will initiate a state consent order compelling such action.

Effect on Permit Backlog

EPA has asked IDEM to comment on the effect permit modifications for CSO permittees will have on Indiana's permit backlog. Each CSO project manager will initiate a permit modification as necessary at the appropriate stage during the process. This workload is not borne by the NPDES permit writer. In cases where the renewal of an NPDES permit coincides with the review of the LTCP, the CSO project manager will make every effort to accommodate the needs of the NPDES permit writer. A permit modification can be done at any time, however, so IDEM does not expect for any additional work load or the imposition of impediments to the timeline for issuing NPDES permits.

CSO Communities in Indiana

Indiana has a baseline of 107 CSO communities. IDEM currently has 83 CSO communities, excluding those communities listed above, requiring long term CSO controls to be approved and placed in an enforceable mechanism to ensure compliance with the Policy. Encompassing both the OECA and OW goals, Indiana will commit to having 65 communities by 2007, and at least 10 additional communities by 2008 in enforceable mechanisms consistent with the Policy. The remaining communities will be addressed by the end of 2009. In addition, all of our Great Lakes Basin CSO communities are included. Where possible and feasible, IDEM will strive to use the watershed approach. IDEM will provide status reports to EPA as identified in the EnPPA.

CSO LTCP Review Process

CSO communities were required to submit LTCPs as an NPDES permit requirement. Upon receipt of the LTCP, CSO staff performs a preliminary completeness review to ensure that the LTCP has all of the elements required by the Policy. Once the plan is deemed complete, it is scheduled for a formal review.

A LTCP will be considered 'approvable' if IDEM believes all of the elements in the plan conform to the Policy, EPA and IDEM guidance, and the proposed controls plan for the attainment of water quality standards. CSO staff pays particular attention to the public participation, sensitive areas and alternatives analysis in the plan. The final LTCP approval occurs in the context of the permit, the Agreed Order or the state consent decree.

For more information about the CSO Program, contact:

Cyndi Wagner, Chief
Wet Weather Section
Office of Water Quality

Voice: 317-233-0473
Toll Free: 800-451-6027
E-mail: cwagner@idem.in.gov

CURRENT APPROVED CSO CONTROLS

Community	Action	Mechanism
Akron	CSO treatment facility.	Agreed Order. Permit modification drafted.
Albion	100% Sewer separation completed.	Permit reflects separated system.
Avilla	Enough sewer separation to eliminate all CSO outfalls to be completed by November 2005.	Attachment A for permit modification.
<i>*Bremen</i>	Enough sewer separation completed to eliminate all CSO outfalls.	Attachment A with post construction compliance monitoring.
<i>*Brazil</i>	100% Sewer separation completed.	Attachment B for permit modification.
<i>*Greenfield</i>	100% Sewer separation completed.	Permit reflects separated system.
Knox	100% Sewer separation completed.	Permit reflects separated system.
Lagrange	100% Sewer separation completed.	Permit reflects separated system.
<i>*Michigan City</i>	CSO treatment facility under construction, to be operational by April 2006.	Permit on public notice 8/05.
Milford	Enough sewer separation completed to eliminate all CSO outfalls.	Attachment A for permit modification.
Ossian	100% Sewer separation completed.	Permit renewal pre-PN draft reflects this.
Remington	100% Sewer separation completed.	Permit reflects separated system.
Veedersburg	Enough sewer separation completed to eliminate all CSO outfalls.	Attachment A in current permit reflects this.
Warren	Enough sewer separation completed to eliminate all CSO outfalls.	Attachment A in current permit reflects this.

**Majors*

SCHEDULE FOR CSO LONG TERM CONTROL PLAN APPROVAL WORKPLAN FINAL LIST

2005

COMMUNITY	IMPACTS	# CSOs	REVIEW INITIATED	TARGET APPROVAL	TARGET FINAL ¹	MECHANISM
Aurora	303d, Ohio River	5	2/03/05	4/27/05	12/05	A.O.**
<i>Columbus</i>		3	1/04	4/27/05	08/05	Permit
<i>Crawfordsville</i>	303d	1	2/03/05	8/05	11/05	Permit
<i>Goshen</i>	GLI, 303d	6	11/20/04	8/05	11/05	SCD
<i>LaPorte</i>	303d watershed	1	5/04/04	5/31/05	07/8/05	A.O.**
<i>Seymour</i>		1	11/22/04	6/13/05	08/05	Permit
Winamac		5	10/01/04	9/05	12/05	A.O.

2006

COMMUNITY	IMPACTS	# CSOs	REVIEW INITIATED	TARGET APPROVAL	TARGET FINAL	MECHANISM
<i>Auburn</i>	GLI, 303d	4				SJA
<i>Berne</i>		2	4/15/05	11/05	2/06	A.O.
<i>Brownsburg</i>	303d	2	12/28/04	10/05	1/06	SJA
<i>Chesterfield</i>	303d	2	5/04	12/05	3/06	A.O.
<i>Chesterton</i>	GLI, 303d	1	2/28/05	12/05	3/06	Permit
<i>Columbia City</i>		12	2/02/05	11/05	2/06	A.O.
<i>East Chicago</i>	GLI, 303d	3	2/02/05	2/06	5/06	SJA
<i>Lafayette</i>	303d	13				SJA
<i>Logansport</i>	303d	16	11/04			SJA
<i>Mount Vernon</i>	303d, Ohio River	3	5/05/05	2/06	5/06	SJA
<i>New Haven</i>	GLI, 303d	4				A.O.
<i>North Vernon</i>		1				SJA
<i>Rensselaer</i>	303d	10				SJA
<i>Rockport</i>	Ohio River	1	8/11/03	2/06	5/06	A.O.
<i>South Whitley</i>		2	4/04/05	1/06	4/06	A.O.
<i>Sullivan</i>		5	12/28/04	9/05	1/06	A.O.**
<i>Valparaiso</i>	GLI, 303d	1	7/19/05	3/06	7/06	Permit
<i>Warsaw</i>		1	4/27/05	2/06	5/06	Permit
<i>Waterloo</i>	GLI, 303d	1	11/01/04			A.O.**
<i>West Lafayette</i>	303d	4				SJA

2007

COMMUNITY	IMPACTS	# CSOs	REVIEW INITIATED	TARGET APPROVAL	TARGET FINAL	MECHANISM
<i>Alexandria</i>	303d	2	4/14/05			SJA
<i>Bluffton</i>	303d	1	6/17/05			SJA
<i>Boonville</i>	303d	2	7/25/05			SJA
<i>Crown Point</i>	GLI, 303d watershed	5	8/3/05			SJA
<i>Decatur</i>	GLI, 303d	4	3/30/05			SJA
<i>Frankfort</i>	303d	1	4/14/05			Permit
<i>Huntington</i>	303d	14				SJA?
<i>Kendallville</i>	GLI, 303d watershed	1				SJA?
<i>Kokomo</i>	303d	30				SJA?
<i>Ligonier</i>	GLI, 303d	5				SJA?
<i>Madison</i>	303d, Ohio River	7	3/1/05			Permit
<i>Marion</i>	303d	9				SJA?
<i>Muncie</i>	303d	23				SJA?
<i>Nappanee</i>	GLI, 303d watershed	11	5/26/05			SJA?
<i>New Castle</i>	303d	8	7/12/05			SJA?
<i>Noblesville</i>	303d	7				SJA?
<i>Peru</i>	303d	16				SJA?
<i>Plainfield</i>	303d	5	7/8/05			SJA?
<i>Plymouth</i>	303d watershed	10				SJA?
<i>Richmond</i>	303d	4				SJA?

<i>Ridgeville</i>	303d	3				A.O.**
<i>Speedway</i>	303d	1				SJA?
<i>Tell City</i>	303d watershed, Ohio River	5				SJA?
<i>Wakarusa</i>	GLI, 303d watershed	7				SJA?

2008

COMMUNITY	IMPACTS	# CSOs	REVIEW INITIATED	TARGET APPROVAL	TARGET FINAL	MECHANISM
<i>Angola</i>	GLI, 303d	2				SJA?
<i>Eaton</i>	303d	2				A.O.?
<i>Elwood</i>	303d	14				A.O.**
<i>Middletown</i>	303d	3				A.O.?
<i>Montpelier</i>	303d	4				A.O.?
<i>North Judson</i>	303d	2				A.O.?
<i>Redkey</i>		7				A.O.?**
<i>Rossville</i>	303d	5				A.O.?
<i>Summitville</i>	303d	2				A.O.?
<i>Terre Haute</i>		10				A.O.?

2009

COMMUNITY	IMPACTS	# CSOs	REVIEW INITIATED	TARGET APPROVAL	TARGET FINAL	MECHANISM
<i>Attica</i>		3				A.O.?
<i>Butler</i>		1	5/05			A.O.?
<i>Centerville</i>		1				A.O.?
<i>Clinton</i>		6				A.O.?
<i>Connersville</i>		5				A.O.?
<i>Crothersville</i>		1				A.O.?
<i>Fairmount</i>		16				A.O.?
<i>Fortville</i>		7				A.O.?
<i>Greensburg</i>		1				A.O.?
<i>Hartford City</i>		17				A.O.?
<i>Lowell</i>		1				A.O.?
<i>Markle</i>		2				A.O.?
<i>Monticello</i>		6				A.O.?
<i>North Manchester</i>		7				A.O.?
<i>Oxford</i>		2				A.O.?
<i>Paoli</i>		8				A.O.?
<i>Portland</i>		16				A.O.?
<i>Royal Center</i>		1				A.O.?
<i>Rushville</i>		2	3/11/05			A.O.?
<i>Tipton</i>		7				A.O.?
<i>Wabash</i>		8				A.O.?
<i>Washington</i>		5				A.O.?

Key:

** Agreed Order Enforcement Action Initiated

Majors

Minors

¹ Target date for incorporation into the enforceable mechanism

EPA to review state order/state consent decree/permit

A.O. – State Agreed Order

SJA – State Judicial Agreement (State Consent Decree)

FCD – Federal Consent Decree